

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

**ROBERT CLARK and
LYNDA CLARK,**

Plaintiffs,

vs.

Case No.

AMERICAN CREDIT ACCEPTANCE, LLC

Defendant.

COMPLAINT

COMES NOW the Plaintiffs, Robert Clark and Lynda Clark, by counsel, and file this Complaint against American Credit Acceptance, LLC, and alleges and avers as follows:

INTRODUCTION AND JURISDICTION

The Plaintiffs' complaint is based on the Telephone Consumer Protection Act found at 47 U.S.C. Section 227, et. seq. (hereinafter, TCPA). Jurisdiction in this Court arises under 28 U.S.C. Section 1331 which grants original jurisdiction of all civil actions arising under the laws of the United States.

FACTS

1. Plaintiffs Robert Clark and Lynda Clark are residents of Gallia County, Ohio, and reside at 904 County Road 73 in Crown City, OH, 45623. Plaintiffs allegedly owe a consumer debt to American Credit Acceptance, LLC ("American Credit Acceptance"). The collection of said debt is the subject of this action.

2. The Plaintiffs are a "person" as defined in by 47 U.S.C. Section 153(39).
3. Defendant is a corporation with its principle place of business in South Carolina and

which does business in the state of Ohio. Defendant is a creditor of the Plaintiffs.

4. The Defendant is “person” as defined in by 47 U.S.C. Section 153(39).

5. That the Plaintiffs have a cellular telephone number which they use only as a cell phone number.

6. With few exceptions that include calls made for emergency purposes and calls made with prior express consent, the TCPA makes it unlawful to make any call to a cellular telephone using any automatic telephone dialing system or an artificial or prerecorded voice.

7. After the Plaintiffs allegedly became in arrears upon Plaintiffs’ consumer account with Defendant, Defendant began to engage in collection of such indebtedness by telephone and mail.

8. That beginning on or around February 18, 2020 and continuing through March 12, 2020, the Defendant called the Plaintiffs’ cellular telephone number repeatedly.

9. That the Defendant called the Plaintiffs from telephone numbers including, but not limited to, 1-866-544-3430.

10. That when the Defendant contacted the Plaintiffs on the cellular phone, the Defendant used an automatic telephone dialing system and/or pre-recorded or artificial voice.

11. That the Defendant’s calls were not made for emergency purposes.

12. That the Plaintiff repeatedly told the Defendant to not call them, but the Defendant refused.

13. That in fact on one occasion the Defendant told the Plaintiffs that it didn’t care that the Plaintiffs had filed bankruptcy – they would continue to call as much as they want.

14. That the Plaintiffs suffered significant frustration, annoyance, inconvenience and harassment as a result of the Defendant’s repeated calling.

15. That after the Defendant was told repeatedly to stop calling the Plaintiffs, the Defendant knew or should have known it had no consent to call the Plaintiffs and that any consent that may have previously been given was repeatedly revoked by the Plaintiffs.

16. That in fact, the Defendant deliberately chose to ignore the Plaintiffs revoking of any consent to be called on their cell phone.

17. Defendant consistently used an auto-dialing capable device and/or an artificial or prerecorded voice message in making calls to the Plaintiffs on their cellular telephones.

18. The Plaintiffs retained attorney Ben Sheridan of Klein & Sheridan, LC, to represent Plaintiffs' interest in connection with the consumer debt for which Defendant contended the Plaintiffs became in arrears.

19. Thereafter, on or about January 24, 2020, Plaintiffs advised the Defendant that it was no longer authorized to contact the Plaintiffs through the means of a telephone call with Defendant.

20. Plaintiffs expressly requested that the Defendant absolutely stop calling them and revoked by verbal means any authorization Defendant had to contact the Plaintiffs on the telephone.

21. Plaintiffs do not recall ever providing consent for the Defendant to call their cellular telephones. However, to the extent such consent was implied or otherwise provided, the Plaintiffs, in the above-described phone call, unambiguously removed the Defendant's authorization to call them at any number, including their cellular phones.

22. Thereafter, Defendant continued to utilize an automated dialing capable system to cause telephone calls to be placed to the Plaintiffs on their cellular telephones.

23. The Defendant maintains records of each call placed to the Plaintiffs by date, time called, duration of call, the identity of the Defendant's employees, and notes or codes placed upon

such record by the Defendant's employees. Such records will reflect that the Defendant placed numerous telephone calls to the Plaintiffs' cellular telephone numbers after any consent to call was expressly revoked.

24. That the actions of the Defendants were done in an intentional and unlawful manner, without bona fide error, and without any legal justification or excuse.

25. That as a result of the Defendants actions, the Plaintiffs have suffered the losses and damages as set forth above and are entitled to an award of statutory damages, actual damages and treble damages.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

26. The Plaintiffs incorporate the previous paragraphs as if fully set forth herein.

27. The Defendant used a predictive or other automated dialer system to call the Plaintiffs on their cell phones.

28. The predictive or automated dialer system resulted in numerous calls being placed by the Defendant to the Plaintiffs' cell phones.

29. The Plaintiffs verbally removed any consent that may have existed to call the Plaintiffs' cell phones on a telephone call on or about January 24, 2020.

30. Plaintiffs provided the Defendant with Plaintiffs' cell phone number(s) along with other relevant numbers so Defendant could easily update its records and set its system to do not call.

31. Nevertheless, Defendant continued to call Plaintiffs' cell phones by using an automated dialer device.

32. As a result of the Defendant's actions, Defendant has repeatedly violated the TCPA 47 USCS § 227(b)(1).

33. The Defendant's violations of the TCPA were willful, as the Plaintiffs verbally expressly removed their consent to call their cell phones upon answering unwanted calls, and the Defendant ignored them.

34. As a result of the Defendant's actions, Plaintiffs have been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise caused emotional distress.

DEMAND FOR RELIEF

Plaintiffs demand from the Defendant:

- (a) General and/or actual damages;
- (b) \$500 per violation of the Telephone Consumer Protection Act as provided for in 47 USCS § 227(b)(3)(B);
- (c) \$1,500 per violation of the TCPA to the extent the violations are found to be willful under 47 USCS § 227(b)(3)(C);
- (d) Attorney's fees and costs pursuant to the TCPA; and
- (e) Such other relief as the Court shall deem just and proper under the attendant circumstances.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE

ROBERT CLARK AND LYNDA CLARK
BY COUNSEL

/s/ John N. Ellem

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Admission to be sought Pro Hac Vice

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF OH)
COUNTY OF GALLIA)

Pursuant to 28 U.S.C. § 1746, Plaintiff Robert Clark, having first been duly sworn and upon oath, verifies, certifies, and declares as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified, or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 07/15/2020


Signature



Audit Trail

TITLE Hello
FILE NAME Digital_Complaint...715-1-14i203n.pdf
DOCUMENT ID 3f7fc92b6e8292bd09f30339345bcccedae077ef
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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF OH)
COUNTY OF GALLIA)

Pursuant to 28 U.S.C. § 1746, Plaintiff Lynda Clark , having first been duly sworn and upon oath, verifies, certifies, and declares as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
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I declare under penalty of perjury that the foregoing is true and correct.

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